





IN THE MATTER OF A BOARD OF INQUIRY  
UNDER THE  
HUMAN RIGHTS CODE, 1981  
STATUTES OF ONTARIO, CHAPTER 53, AS AMENDED

MISS JUSTINE BLAINEY  
BY HER LITIGATION GUARDIAN  
MRS. CAROLINE BLAINEY,

Complainant,

- and -

THE ONTARIO HOCKEY ASSOCIATION,  
THE METROPOLITAN TORONTO HOCKEY LEAGUE,  
MR. BRENT LADDS,  
THE ETOBICOKE CANUCKS AND  
MR. BOB IMPEY,

Respondents.

BOARD OF INQUIRY: IAN C. SPRINGATE

APPEARANCES:

Counsel for the Complainant	- Ms. Anna Fraser
Counsel for the Respondents and the Ontario Women's Hockey Association	- Mr. Bryan Finlay, Q.C.
Counsel for the Metropolitan Toronto Hockey League	- Mr. Michael Penman
Counsel for the Ontario Human Rights Commission	- Mr. Michael Bader

HEARINGS: January 8 and January 21, 1988

## A W A R D

I issued a previous decision in this matter on December 3, 1987. In that decision I concluded that the respondents had denied Ms. Blainey the opportunity to play on the Etobicoke Canucks hockey team during the 1986-87 hockey season solely because of her sex. Their conduct was in breach of section 8 of the Human Rights Code in that it infringed Ms. Blainey's rights under section 1 of the Code.

The matter came back on for hearing on January 8, 1988 to deal with the terms of a formal order. At that time, the parties indicated that they had reached agreement with respect to certain of the terms of an order, but were in disagreement with respect to certain other terms. I then entertained representations from the parties with respect to some of the matters in dispute. At the conclusion of the hearing on January 8th, I made an interim oral direction incorporating my rulings with respect to the matters dealt with that day as well as those terms which had already been agreed to by the parties.

Part of my oral direction on January 8, 1988 was as follows:

That notwithstanding any rule, regulation or custom which limits the dates for issuing a Canadian Amateur Hockey Association (CAHA) registration card to a player or fixes the player rosters of any club or team in a division of the OHA for the 1978/88 hockey season, it is ordered that Justine Blainey be forthwith given an opportunity to try out for

a team of her choice and if successful a position on the team be made available to her.

The hearing in this matter resumed on January 21, 1988. On that occasion counsel for Ms. Blainey indicated that Ms. Blainey was now playing for a Metropolitan Toronto Hockey League ("MTHL") team.

When the hearing resumed on January 21, 1988, the parties addressed a request by the Ontario Human Rights Commission that as part of my order I require that material published by the Ontario Hockey Association ("OHA") and its divisions, as well as clubs or teams of its divisions, prominently indicate that eligibility to play hockey is available to members of both sexes. The MTHL opposed having such a term apply to its individual clubs and teams. Its concern is that the league might be held responsible should a team coach or manager place a newspaper advertisement such as "Need two boys to play peewee hockey. Call Frank at 442-7032". In my view, it is the very possibility of advertisements such as this which justifies ensuring that local clubs and teams not be excluded from any order respecting published material. As for MTHL concerns that it might be held responsible for breaches of an order on the part of local team officials, should such a contention be raised, presumably one of the relevant considerations will be whether the MTHL has taken reasonable steps to ensure that the order is being complied with.

A second objection to the proposed term of the order relates to the program offered by the Ontario Women's Hockey Association ("OWHA"). In that this program has been held to be a "special program" within the meaning of section 13(1) of the Code, the OWHA is entitled to restrict participation in the program solely to females. The OWHA operates on a much smaller scale than do the "male" hockey leagues affiliated with the OHA and has a correspondingly smaller promotional budget. The OWHA is concerned that if all advertising material for predominantly male teams is required to expressly invite female participation, the OWHA would be at a marked disadvantage in recruiting female players. Accordingly, the OWHA seeks to exempt all advertising material from the scope of the proposed term. As indicated in my previous decision, the evidence before me suggests that "male" hockey is likely to have only a limited attraction for females. Nevertheless, I believe there is merit in the Commission's contention that females should be advised that they are now permitted to participate in what has formerly been all-male hockey programs. Accordingly, the term of the order relating to published material will apply to advertisements.

The final issue in dispute relates to Ms. Blainey's claim for financial compensation under section 40(1)(b) of the Code, which provides as follows:

40.-(1) Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 8 by a party to the proceeding, the board may, by order,

...

- (b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish.

Ms. Blainey seeks damages of \$15,000 for the infringement of her rights as well as for mental anguish. In support of this claim, counsel for Ms. Blainey points to the personal hurt suffered by Ms. Blainey in her long quest to be allowed to play boys hockey. I have no difficulty in accepting that Ms. Blainey went through a number of difficult and disappointing times. It must, however, be kept in mind that when Ms. Blainey initially set out to play boys hockey, the Code expressly permitted sexually segregated athletic activities. It would not be appropriate to require the respondents to pay damages under the Code for conduct expressly permitted by the Code itself. By the time Ms. Blainey applied to play on the Etobicoke Canucks, however, the Code had been amended by deleting the provision in question. Notwithstanding this fact, the respondents intentionally denied Ms. Blainey an opportunity to play because of her sex. This conduct on their part was willful.



Given these considerations, I am satisfied that Ms. Blainey is entitled to damages for both the lost opportunity to play on the Canucks and for associated mental anguish. I fix the total amount at \$3,000.

Ms. Blainey also claims compensation for expenses which she incurred when attending hockey school. The evidence indicates that hockey schools are geared towards the style of hockey played by male hockey teams, namely a rugged form of play involving deliberate body checking. Ms. Blainey attended a number of hockey schools to improve her skills at a time when the Code expressly allowed for sexually segregated athletic teams. The respondents cannot now be held responsible for the costs involved. Ms. Blainey also attended hockey school after being denied an opportunity to play on the Etobicoke Canucks during the 1986-87 season. The evidence indicates that this was done so as to enable her to keep up her skills with respect to the type of hockey being played by teams such as the Canucks. Ms. Blainey had a legal right to play with the Canucks. Accordingly, her attendance at hockey school after she was denied the opportunity to play with the Canucks is reasonably attributable to the unlawful actions of the respondents. I am prepared to grant this aspect of Ms. Blainey's claim. I will remain seized of this matter in the event that the parties are unable to agree upon the actual amount of compensation involved.



The OWHA was not named as a party in these proceedings. Nevertheless, it took an active role in the hearings. Counsel for the OWHA has agreed that certain terms of my order should expressly refer to that organization.

Having regard to all of the foregoing, and the terms agreed to by the parties, I hereby make the following order.

ORDER

This Board of Inquiry, having found that the respondents violated the provisions of the Human Rights Code, hereby orders:

1. That the Respondents, the Ontario Hockey Association (hereinafter 'OHA'), Metropolitan Toronto Hockey League (hereinafter 'MTHL') and Ontario Women's Hockey Association (hereinafter 'OWHA') be barred from refusing or otherwise interfering with Justine Blainey's rights to compete for a position on a hockey team on the same basis that males are allowed to compete and, if successful, from interfering with her right to play on such team.
2. That the OHA and MTHL be barred from enforcing, promulgating or monitoring any rule, regulation,

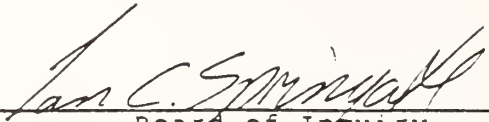
directive, custom or usage with bars or restricts in any fashion whatsoever females from participating with males in hockey on an integrated basis.

3. That the OHA and MTHL be barred from disciplining or otherwise penalizing any club or team or any member thereof including any individual player, coach, manager, for allowing females to play on teams under their jurisdiction.
4. That the OWHA be declared a special program within the meaning of section 13 of the Ontario Human Rights Code, and that eligibility to participate and play on any team within its jurisdiction and control and any tournaments it sponsors be limited solely to females.
5. That other than provided in 4 above, eligibility to participate and play on any team or any division within the jurisdiction and control of the OHA including the MTHL and its affiliated members shall be available to members of both sexes.
6. That all pamphlets, books or other material containing the rules and regulations and all registration, recruitment and advertising material published or caused to be published by the OHA, any division of the OHA and any club or team of a

division of the OHA other than the OWHA contain a statement prominently displayed therein that eligibility is available to members of both sexes.

7. That the OHA, MTHL, and OWHA display prominently in all offices to which members of the public are invited a copy of the "declaration of management policy" issued by the Ontario Human Rights Commission.
8. That the OHA, OWHA and MTHL take whatever proceedings are necessary to ensure that this order will be complied with by all of its constituent member clubs, managers, coaches and other official(s) thereof.
9. That the OHA, OWHA and MTHL send a copy of the first eight paragraphs of this order to every manager, coach and other official(s) of every team under their respective jurisdiction.
10. That the OHA, the MTHL and the Etobicoke Canucks jointly and severally pay to Ms. Blainey's litigation guardian the sum of three thousand dollars in addition to the cost of any hockey school attended by Ms. Blainey after being denied an opportunity to play on the Etobicoke Canucks.

-  
DATED at Mississauga, this 21st day of March,  
1988.

  
Board of Inquiry